

June 23, 2022

The Honorable Katherine Polk Failla
United States District Court
for the Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square, Room 618
New York, NY 10007

Re: *Dinosaur Financial Group LLC et al. v. CUSIP Global Services et al.*, Case No. 22 Civ. 1860-KPF (“Dinosaur”); *Hildene Capital Management, LLC. v. American Bankers Association et al.*, Case No. 22 Civ. 1929-KPF (“Hildene”).

Dear Judge Failla:

In view of the initial pre-trial conference scheduled for June 28, 2022 [*Dinosaur* Dkt. 51, *Hildene* Dkt. 41], the parties make this joint submission pursuant to the Court’s Individual Rule of Practice 3.B.

1. A statement of all existing deadlines, due dates, and/or cut-off dates.

None.

2. A brief description of any outstanding motions.

Dinosaur Plaintiffs’ Motion for Partial Summary Judgment or Declaratory Relief on Copyrightability. The *Dinosaur* plaintiffs filed a letter, dated April 20, 2022, seeking a pre-motion conference with respect to a potential motion for partial summary judgment on their claim seeking a declaratory judgment that CUSIP numbers are not copyrightable. *Dinosaur* Dkt. 36. Defendants oppose, *see Dinosaur* Dkt. 55, and the *Hildene* Plaintiff respectfully believes that the Court should first decide the consolidation and interim class counsel issues and then class counsel should decide whether and when to move for summary judgment.

Defendants’ Motion for Consolidation/Appointment of Interim Class Counsel. Defendants have filed a letter, dated May 6, 2022, seeking a pre-motion conference with respect to a potential motion to consolidate the *Hildene* and *Dinosaur* actions, and for the Court to appoint interim class counsel for the consolidated action. *Dinosaur* Dkt. 53. The *Hildene* Plaintiff agrees that the cases should be consolidated and requests that its counsel, Wollmuth Maher & Deutsch LLP, be appointed sole or co-lead interim class counsel. *Hildene* Dkt. 45. The *Dinosaur* plaintiffs oppose the relief requested by Defendants and the *Hildene* Plaintiff. *Dinosaur* Dkt. 58.

Defendants’ Motions to Dismiss. Once the Court has determined whether to consolidate the actions, Defendants intend to submit a letter to the Court seeking a pre-motion conference on

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a motion to dismiss the consolidated complaint (if the Court orders consolidation) or to dismiss the individual complaints (if the Court denies consolidation). The *Hildene* Plaintiff intends to submit an opposition to Defendants' pre-motion to dismiss the operative complaint letter whether the cases are consolidated or not.

3. A brief description of the status of discovery and of any additional discovery that needs to be completed.

Discovery has not yet commenced. The *Hildene* Plaintiff believes that discovery should commence once the Court rules on consolidation and the appointment of interim class counsel. Defendants believe that discovery should be stayed pending resolution of motions to dismiss.

4. A statement describing the status of any settlement discussions and whether the parties would like a settlement conference.

The parties have not had any settlement discussions and agree that meaningful settlement discussions are unlikely to occur at this stage of the case. The parties do not request a settlement conference at this time.

5. A statement of the anticipated length of trial and whether the case is to be tried to a jury.

At this early stage, the parties do not have sufficient information to estimate the length of any potential trial. The antitrust claims would be tried to a jury, and any claims for declaratory and injunctive relief would be resolved by the Court.

6. A statement of whether the parties anticipate filing motions for summary judgment, including the basis of any such motion.

Plaintiffs' statement. The *Dinosaur* Plaintiffs have filed a letter seeking to file a motion for partial summary judgment on their claims for declaratory relief under the Copyright Act on the grounds set forth in their pre-motion letter. *Dinosaur* Dkt. 36. The *Dinosaur* plaintiffs responded to Defendants' opposition in a subsequent letter. *Dinosaur* Dkt. 58. The *Hildene* Plaintiff believes that any decision about the timing for summary judgment motions should occur once the Court has ruled on consolidation and the appointment of interim class counsel.

Defendants' statement. It is premature to describe comprehensively the bases of any future motion for summary judgment. As noted, Defendants intend to file a motion to dismiss Plaintiffs' complaints or Plaintiffs' consolidated complaint for failure to state a claim for relief, lack of justiciability, and other grounds. In the event that their motions to dismiss are

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denied, Defendants anticipate moving for summary judgment on similar grounds as well as others based on discovery in the case.

7. Any other issue that the parties would like to address at the pretrial conference or any information that the parties believe may assist the Court in advancing the case to settlement or trial.

The parties are prepared to address the issues raised by their pre-motion letters at the upcoming conference. Once the Court has addressed the pending pre-motion letters, the parties will be prepared to address a further schedule.

Respectfully submitted,

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